IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5035 OF 2005

Sneha Parag Coop.Hsg.Socy.Ltd. .. Petitioner

Versus

Shashupal Baburao Gangaj & Ors. .. Respondents

Mr.Rahul Rao with Vijay Pandey i/b. I.V.Rao for petitioner

Mr.N.V.Bandivadekar for respondent Nos. 2 to 5

Mr.D.A.Patil, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th January 2006.

P.C.

. Heard Mr.Rao for petitioner and

Mr.Bandivadekar for respondent Nos. 2 to 5. Rest of the respondents are formal parties (Respondent Nos. 6 and 7). Service thereon is dispensed with.

2. With the able assistance of Mr.Rao, I have perused orders which are impugned in this petition. While it is true that some procedural provisions and adherence to it cannot be dispensed with completely, yet, in this case, substantial justice has been done by courts below in not only permitting respondent Nos. 2 to 5 to move an application for restoration of the main dispute but also got themselves impleaded as disputants in place of original sole disputant.

3. There is also substance in the contention of Mr.Rao that the deceased did not remain present after the dispute was heard partially and it is in that light that the same came to be dismissed in default way back in the year 2001.

However, in my view, that aspect can be taken care of by compensating the petitioner society as also imposing conditions on the respondent Nos. 2 to 5. Further, expeditious disposal of the main matter can be ensured if all procedural aspects including payment of costs as directed in this order are complied with. Accordingly, following order:-

a) Petition stands dismissed.

b) However, respondent Nos. 2 to 5 shall pay costs for the delay caused in taking out the application, quantified at Rs.5000/- condition precedent.

c) In case the costs are paid to the petitioner society and the dispute application is amended within a period of two weeks from today, the Cooperative Court concerned to hear and decide the

main dispute on merits and in accordance with law within a period of four months from the date on which respondent Nos. 2 to 5 carry out the amendments.

d) Needless to state that if the directions are not adhered to within the stipulated period, the dispute shall stand dismissed without reference either to this court or Cooperative court.

e) No order as to costs.

(S.C.DHARMADHIKARI, J)